

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SHARIF KING,

Plaintiff,

v.

9:22-cv-00643 (AMN/ML)

R. LAMB,

Defendant.

APPEARANCES:

SHARIF KING

Five Points Correctional Facility
Caller Box 119
Romulus, New York 14541
(last known address)
Plaintiff *pro se*

OF COUNSEL:

LETITIA A. JAMES

Attorney General for the State of New York
Litigation Bureau
The Capitol
Albany, New York 12224
Attorneys for Defendant

RACHAEL OUIMET, ESQ.

Assistant Attorney General

Hon. Anne M. Nardacci, United States District Judge:

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

Plaintiff *pro se* Sharif King (“Plaintiff”) brings this action pursuant to 42 U.S.C. § 1983 alleging that Corrections Officer R. Lamb (“Defendant”) violated his Eighth Amendment rights. Dkt. No. 1 (the “Complaint”). Defendant Lamb moved to dismiss Plaintiff’s Complaint for failure to prosecute pursuant to Rules 37 and 41 of the Federal Rules of Civil Procedure, and sought monetary sanctions pursuant to Rule 37 of the Federal Rules of Civil Procedure. Dkt. No. 29 (the

“Motion”). Plaintiff did not oppose the Motion. On December 14, 2023, United States Magistrate Judge Miroslav Lovric issued a Report-Recommendation recommending that this Court grant the Motion, dismiss the Complaint with prejudice, and impose a monetary sanction of \$88.80 upon Plaintiff. Dkt. No. 32 (the “Report-Recommendation”).

For the reasons set forth below, the Court adopts the Report-Recommendation.

II. LEGAL STANDARD

This Court reviews *de novo* those portions of a magistrate judge’s report-recommendations that have been properly preserved with a specific objection. 28 U.S.C. § 636(b)(1)(C); *Petersen v. Astrue*, 2 F. Supp. 3d 223, 228-29 (N.D.N.Y. 2012). If no specific objections have been filed, this Court reviews a magistrate judge’s report-recommendations for clear error. *See id.* at 229 (citing Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition). “When performing such a clear error review, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Dezarea W. v. Comm’r of Soc. Sec.*, No. 6:21-CV-01138 (MAD/TWD), 2023 WL 2552452, at *1 (N.D.N.Y. Mar. 17, 2023) (quoting *Canady v. Comm’r of Soc. Sec.*, No. 1:17-CV-0367 (GTS/WBC), 2017 WL 5484663, at *1 n.1 (N.D.N.Y. Nov. 14, 2017)). After appropriate review, “the court may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

III. DISCUSSION

As no party has filed objections to the Report-Recommendation, this Court reviews the Report-Recommendation for clear error.

To reach his recommendation to dismiss the Complaint, Magistrate Judge Lovric considered each of the five factors that courts in the Second Circuit use to adjudicate motions

pursuant to Rule 41(b), Dkt. No. 32 at 6-8 (quoting, *inter alia*, *Lucas v. Miles*, 84 F.3d 532, 535 (2d Cir. 1996)), and found that each factor weighed in favor of dismissal with prejudice, *id.* The Court has reviewed this recommendation for clear error and found none. However, in consideration of Plaintiff's *pro se* and *in forma pauperis* status, the Court declines to impose a monetary sanction. *See, e.g., Baez v. Kennedy Child Study Ctr.*, No. 11-CV-7635 (JMF), 2013 WL 705913, at *2 (S.D.N.Y. Feb. 27, 2013).

As such, the Court adopts the Report-Recommendation.

IV. CONCLUSION

Accordingly, the Court hereby

ORDERS that the Report-Recommendation, Dkt. No. 32, is **ADOPTED**; and the Court further

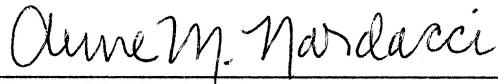
ORDERS that Defendant's motion to dismiss and for monetary sanctions, Dkt. No. 29, is **GRANTED to the extent it seeks dismissal of the Complaint, and DENIED to the extent it seeks monetary sanctions**; and the Court further

ORDERS that Plaintiff's Complaint, Dkt. No. 1, is **DISMISSED with prejudice**; and the Court further

ORDERS that the Clerk serve a copy of this Order on the parties in accordance with the Local Rules and close the case.

IT IS SO ORDERED.

DATED: February 2, 2024
Albany, New York


Anne M. Nardacci
U.S. District Judge